

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. SPRINT COMMUNICATIONS COMPANY, L.P., Respondent.	DOCKET NO. FCU-03-47
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued March 19, 2004)

Background

On July 21, 2003, Mr. Jim Danks filed a written complaint with the Utilities Board (Board) stating that Sprint Communications Company, L.P. (Sprint) had switched their telephone long distance service without authorization. Mr. Danks filed a second letter on August 5, 2003, with additional details. The second letter included a copy of a letter Mr. Danks sent to Sprint stating he was returning the bill Sprint sent to Ms. Elizabeth Danks, that Elizabeth did not live at the Danks' address and did not have their telephone number and, therefore, that she had no responsibility to pay the attached bill. The details of the complaint are contained in informal complaint file

number C-03-183, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. On July 24, 2003, Board staff forwarded the complaint to Sprint for response. Sprint responded by letter dated August 15, 2003. Sprint denied the slamming allegation and stated its records showed that Mr. Danks' telephone number was switched to Sprint after receipt of a "Letter of Agency for Residential Long Distance service" (LOA) executed on June 3, 2003, in a Sprint PCS store by Ms. Elizabeth Danks. Sprint enclosed a copy of the LOA and stated it provided written proof in accordance with Federal Communications Commission rules. Sprint further stated it had cancelled the account July 11, 2003, and issued full credit to the account as a good will gesture. Sprint stated as of the date of the letter, the Danks' account reflected a zero balance and no monies were owed to Sprint.

On August 19, 2003, Board staff issued a proposed resolution summarizing what had occurred, finding that no slam had occurred, stating it appeared no further action was required, and informing the parties what to do if they believed staff's understanding to be in error.

On September 2, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence a proceeding to consider a civil penalty for a slamming violation. The Consumer Advocate stated that Ms. Elizabeth Danks is Mr. Danks' daughter, and according to Ms. Danks, the

signature on the LOA is not genuine. The Consumer Advocate further stated the proposed resolution was incorrect, there appeared to be no authorization for the switch, and that Sprint slammed Mr. Danks in violation of Iowa's anti-slamming law. The Consumer Advocate argued the Board should impose a civil penalty because crediting the account would not by itself stop the fraudulent practice. The Consumer Advocate argued the Board should consider any history of violations in determining the amount of the penalty, and cited ten informal complaint files it believed the Board should consider when imposing a civil penalty, including one in which Sprint entered into a settlement under which it agreed not to contest a customer's allegation that a signature on a claimed authorization to switch long distance was not genuine.

On January 20, 2004, the Board issued an order finding sufficient information to warrant further investigation, docketing the proceeding, and giving Sprint the opportunity to file a response to the allegations in the Consumer Advocate's petition.

Sprint filed a response to the petition on March 5, 2004. Sprint stated the credit given to Mr. Danks' account was not an admission or evidence of wrongdoing by Sprint, but was an effort to resolve Mr. Danks' claim and consistent with a prior Board ruling in Docket No. FCU-02-23 that an appropriate resolution in instances of alleged slamming is to make the customer whole at the expense of the telecommunications carrier. Sprint enclosed two additional documents it alleged contained Ms. Danks' signature signed on the same date as a part of the same transaction as that involving the signature on the LOA. Sprint, therefore, denied the

signature was not genuine. It stated that by endorsing the LOA, Ms. Danks attested that she was authorized to change service on Mr. Danks' telephone number. Sprint alleged that the variation in the signature on the LOA compared to the signatures on the other two documents was because an electronic signature pad was used to endorse the LOA and traditional ink pens were used to sign the other two documents. Sprint argued it followed all slamming laws and regulations and denied it slammed Mr. Danks. It argued a civil penalty should not be imposed and that it does not have a history of prior slamming violations. Sprint stated it has strong anti-slamming procedures in place and has trained its personnel in these policies and procedures. Sprint addressed the ten informal complaint files listed by the Consumer Advocate and stated why they do not provide support for the allegation that Sprint has a history of prior violations. Sprint acknowledged that in one other complaint case the Consumer Advocate alleged a forged LOA and that Sprint settled the case, but argued that the facts of this case are separate and distinct. Sprint requested the Board conclude it did not make an unauthorized service change based on the corroborating signature documents, deny the Consumer Advocate's request for imposition of a civil penalty, determine the proposed resolution was correct, and dismiss the docket.

On March 17, 2004, the Board issued an order stating Sprint's response did not provide new information that altered the Board's initial determination, and assigned the case to the undersigned administrative law judge.

Pursuant to Iowa Code §§ 476.3(1) and 476.103(4) (2003), and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's website at www.state.ia.us/iub.

The issues

The issues in this case generally involve the change of Mr. Danks' long distance telephone service to Sprint, whether Sprint complied with state and federal law when it changed Mr. Danks' service, whether imposition of a civil penalty is appropriate, and what should be done to resolve the case. The issues also include whether Ms. Danks had the authority to change her father's long distance telephone service. They include whether the signature on the LOA is genuine or not, and the legal effect of the signature with respect to the slamming allegation whether it is determined to be genuine or not. Other issues may be raised by the parties prior to and during the hearing.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The

proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

Party status and communication with the Board

The Consumer Advocate and Sprint are currently the parties to this proceeding. If Mr. Danks wishes to be a party to this case, he must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the Board and the other parties may serve all orders, correspondence, or other documents. 199 IAC 7.2. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket number of this case as

stated in the caption above. Appearances must be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding except that three copies must be served on the Consumer Advocate. 199 IAC 1.8(4)"c." These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Ex parte communication is prohibited as provided in Iowa Code § 17A.17. Parties or their representatives and presiding officers shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The undersigned administrative law judge is the presiding officer in this case.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-03-183, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's website at www.state.ia.us/iub.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Stipulation of Facts and Prehearing Brief

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. The stipulation must clearly identify which facts are agreed to by the parties and which facts remain in dispute and need to be resolved. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions. Finally, the parties must discuss whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

IT IS THEREFORE ORDERED:

1. If the parties are unable to settle this case, on or before April 16, 2004, the parties must file a document stipulating to as many of the facts in this case as

possible. The stipulation must also identify which facts remain in dispute and need to be resolved. **The stipulation must clearly identify which facts are agreed to by the parties and which facts remain in dispute and need to be resolved.** The parties must also state whether they believe a hearing is necessary in this case, or whether the case could be submitted on the stipulated facts, prefilled testimony and evidence, and the prehearing briefs. If Mr. Danks wishes to become a party to this case, he must file written notice with the Board no later than April 16, 2004, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all the facts of this case, prefilled testimony and exhibits must be filed only with respect to the facts that remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before April 30, 2004, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must state what actions it believes would be necessary to bring this matter to a proper

resolution, and why such actions would be appropriate and in accordance with applicable law.

4. If needed pursuant to paragraph two, on or before May 14, 2004, Sprint must file prepared testimony and exhibits and a prehearing brief. Sprint may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Sprint must address the issues discussed above, support each of the allegations made in its response, and file any other evidence not previously filed. Sprint should use exhibit numbers 100 and following. In its prehearing brief, Sprint must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by May 21, 2004.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Wednesday, June 2, 2004, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 1-515-281-5256 no later than Friday, May 28, 2004, to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 19th day of March, 2004.